

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:21-cv-00100-MR-WCM

NHM CONSTRUCTORS, LLC,)
)
 Plaintiff,)
)
v.)
)
HEARTLAND CONCRETE, LLC,)
)
 Defendant.)

)

ORDER

This matter is before the Court *sua sponte*.

On February 15, 2021, Plaintiff filed its original Complaint against Defendant in the Superior Court Division of the General Court of Justice of Buncombe County, North Carolina. Doc. 1-1. Plaintiff filed an Amended Complaint on March 11, 2021. Doc. 1-2.

On April 12, 2021, Defendant removed the matter to this Court. Doc. 1. In the associated Notice of Removal, Defendant contends that subject matter jurisdiction exists pursuant to 28 U.S.C. § 1332.

Defendant states that it “is a corporation organized and existing under the laws of the Commonwealth of Virginia with its principal place of business in Petersburg, Virginia” and, upon information and belief, that Plaintiff “is a corporation organized and existing under the laws of the State of North

Carolina with its principal place of business in Buncombe County, North Carolina.” Doc. 1 at ¶¶1-2.

On June 28, 2021, Plaintiff, with Defendant’s consent, filed an Amended Complaint (the “Second Amended Complaint,” Doc. 6). Therein, Plaintiff also alleges that both parties are corporations, and makes allegations regarding each party’s principal place of business and state of organization. See Doc. 6 at ¶¶1-2.

However, the caption in this matter and business entity databases in North Carolina and Virginia indicate that both Plaintiff and Defendant are limited liability companies.¹

“For purposes of diversity jurisdiction, the citizenship of a limited liability company ... is determined by the citizenship of all of its members.” Cent. W. Va. Energy Co., Inc. v. Mountain State Carbon, LLC, 636 F.3d 101, 103 (4th Cir. 2011). When members are LLCs themselves, the citizenship issues must be traced through until one reaches only individuals and/or corporations. See Jennings v. HCR ManorCare, Inc., 901 F.Supp.2d 649, 651

¹ See VA Code Ann. § 13.1-1012(A) (“A limited liability company name shall contain the words ‘limited company’ or ‘limited liability company’ or their abbreviations ‘L.C.’, ‘LC,’ ‘L.L.C.’ or ‘LLC’”); N.C.G.S.A. § 55D-20(a)(2) (“The name of a limited liability company must contain the words ‘limited liability company’ or the abbreviation ‘L.L.C.’ or ‘LLC’, or the combination ‘ltd. liability co.’, ‘limited liability co.’, or ‘ltd. liability company’”).

(D. S.C. 2012) (“an LLC’s members’ citizenship must be traced through however many layers of members there may be”).

“The burden of establishing subject matter jurisdiction is on...the party asserting jurisdiction.” Robb Evans & Assoc., LLC v. Holibaugh, 609 F.3d 359, 362 (4th Cir. 2010). Thus, here, Defendant “bears the burden of proof, by a preponderance of the evidence, to show the parties’ citizenship to be diverse.” Zoroastrian Ctr. & Darb-E-Mehr of Metro. Washington, D.C. v. Rustam Guiv Found. of New York, 822 F.3d 739, 748 (4th Cir. 2016); see also Cartwright v. SSC Yanceyville Operating Company, LLC, No. 1:18CV287, 2018 WL 6680925, at *2 (M.D.N.C. Dec. 19, 2018) (explaining that the removing party had the burden of demonstrating removal was proper by showing, by a preponderance of evidence, that the parties were diverse); Veach v. Mary Moody Northern, Inc., No. 7:16-cv-00518, 2016 WL 10516722, at *1 (W.D. Va. Nov. 7, 2016).

The current record, however, does not reveal the identity or citizenship of the constituent members of either Plaintiff or Defendant.

Accordingly, Defendant is **DIRECTED** to file, on or before **February 2, 2022** a Notice identifying the citizenship particulars of NHM Constructors, LLC and Heartland Concrete, LLC.

It is so ordered.

Signed: January 26, 2022

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf
United States Magistrate Judge

